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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/013,078

12/10/2001

Antonio R. Bogat

9975

1412

26884

7590

04/18/2006

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EXAMINER

O'CONNOR, GERALD J

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/013,078		Bogat	
	<b>Examiner</b>		<b>Art Unit</b>	
	O'Connor		3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on February 1, 2006 (RCE).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-22 is/are pending in the application.
- 4a) Of the above claim(s) 14-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on December 10, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 1, 2006 has been entered.

### ***Preliminary Remarks***

2. This Office action responds to the amendment and arguments filed by applicant on February 1, 2006 in reply to the previous Office action on the merits, mailed October 12, 2005.
3. The cancellation of claims 1-4 by applicant in the reply filed February 1, 2006 is hereby acknowledged.
4. The amendment of claims 5 and 6 by applicant in the reply filed February 1, 2006 is hereby acknowledged.
5. The addition of claims 7-22 by applicant in the reply filed February 1, 2006 is hereby acknowledged.

***Election/Restriction***

6. Newly submitted claims 14-22 (Invention II) are directed to an invention that is independent or distinct from the invention originally claimed (Invention I) for the following reasons:

Invention I is related to Invention II, as process and apparatus for its practice. The inventions are distinct if it can be shown that *either*: (1) the process as claimed can be practiced by another, materially different apparatus, or by hand, *or* (2) the apparatus as claimed can be used to practice another, materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another, materially different apparatus, or by hand, such as by apparatus requiring the goods be passed, in service, by hand from the incoming goods path into the goods collection zone.

7. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 14-22 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

9. Claims 5-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Humble et al. (US 4,792,018).

Humble et al. disclose a method of detecting misappropriation of goods in a self-checkout lane 20 in a store, the self-checkout lane 20 having an incoming goods path and a goods collection zone 15, and goods being passed, in service, from the incoming goods path into the goods collection zone 15; the incoming goods path including a product scanner 10 electrically coupled to a processor 44, and the goods collection zone 15 including a weighing scale 43 electrically coupled to the processor 44; the method being performed by a processor and comprising the steps:

(a) receiving input from the product scanner 10 identifying goods introduced by a customer into the incoming goods path;

(b) controlling one or more barriers at least partially surrounding the goods collection zone 15 so as to restrict access to goods collecting in the goods collection zone;

(c) calculating 126, by referring to a record of product weights, a total weight value representative of the total weight of the goods introduced into the incoming goods path;

(d) weighing the goods introduced into the incoming goods path, once collected at the goods collection zone 15, by the weighing scale 43;

(e) receiving 116 input from the weighing scale 43 specifying the total weight of the goods collected at the goods collection zone 15;

(f) comparing 118 the said total weight value of the goods introduced into the incoming goods path 126 with the said total weight of the goods collected at the goods collection zone 116 and calculating any discrepancy between the said weights; and,

(g) if the calculated discrepancy exceeds a predetermined value, inhibiting conclusion of a transaction for purchase of goods introduced into the incoming goods path and collected in the goods collection zone and continuing to control the one or more barriers at least partially surrounding the goods collection zone so as to restrict access until the discrepancy is resolved and the transaction is concluded.

Regarding claims 6 and 7, the method of Humble et al. further comprises either of: notifying store personnel, or operating an alarm, if the calculated discrepancy is greater than the predetermined value.

Regarding claim 8, in the method of Humble et al., the goods collection zone 15 is large enough to hold a shopping cart full of items.

Regarding claim 9, in the method of Humble et al., the weighing scale 43 is positioned beneath the goods collection zone 15. See, in particular, column 5, lines 59-68.

Regarding claim 10, in the method of Humble et al., the goods collection zone 15 further includes a conveyor 12.

Regarding claim 11, in the method of Humble et al., the weighing scale 43 is shaped and sized so as to substantially fill the goods collection zone 15.

Regarding claim 12, in the method of Humble et al., the step of calculating a total weight value by referring to a record of product weights further comprises: weighing loose grocery items in the incoming goods path. See, in particular, column 10, lines 3-15.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Humble et al. (US 4,792,018).

Humble et al. disclose a method of detecting misappropriation of goods in a self-checkout lane in a store, as applied above in the rejection of claim 5 under 35 U.S.C. 102(b), but the method of Humble et al. fails to include automatically retracting the one or more barriers at least partially surrounding the goods collection zone when the calculated discrepancy is less than the predetermined value and payment for the collected goods has been made, since, (1) rather than automatically retracting the barrier from in front of the goods, the goods are automatically conveyed out from behind the barrier, and, (2) rather than providing access to the goods after payment has been made, access to the goods is given before payment is made/completed.

However, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Humble et al. so as to retract the barrier rather than convey out the goods, and to collect payment before giving access to the goods for bagging rather than after, simply as a matter of design choice, since each change would comprise merely a reversal of parts, such as could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results, and since it has been held that a mere reversal of the essential working elements of an invention involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.



*Response to Arguments*

12. Applicant's arguments filed February 1, 2006 have been fully considered but they are not deemed persuasive.

13. Regarding the argument that Humble et al. do not disclose a "goods collection zone including a weighing scale electrically coupled to the processor," Humble et al. indeed disclose a goods collection zone 15 including a weighing scale 43 electrically coupled to the processor 44.

14. Regarding the argument that Humble et al. do not disclose "calculating, by referring to a record of product weights, a total weight value representative of the total weight of the goods introduced into the incoming goods path" because they weigh the number of items presently placed in the goods collection zone before those items then proceed to the bagging area, Humble et al. indeed disclose calculating, by referring to a record of product weights, a total weight value representative of the total weight of the goods introduced into the incoming goods path, depending, obviously, on the number of goods being purchased.

15. Regarding the argument that Humble et al. do not disclose "continuing to control the one or more barriers at least partially surrounding the goods collection zone so as to restrict access until the discrepancy is resolved and the transaction is concluded," Humble et al. indeed disclose continuing to control the one or more barriers at least partially surrounding the goods collection

zone 15 so as to restrict access until the discrepancy is resolved and the transaction is concluded, since the conveyor 12 moving the items from the incoming goods path to the goods collection zone 15 is reversed and the items returned to the incoming goods path until the discrepancy in the total weight is resolved. See, in particular, column 6.

### *Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to the disclosure.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

18. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is **(571) 273-6787**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at (571) 272-6771.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (571) 273-8300.** Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

April 14, 2006

A handwritten signature in black ink, appearing to read 'Gerald J. O'Connor', followed by the date '4/14/06' written in a similar cursive style.

Gerald J. O'Connor

Primary Examiner

Group Art Unit 3627